Supreme Court, U.S.
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No.
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

IN RE ANGELA JARMUTH, Petitioner

On Petition For Writ Of Prohibition
To The Court of Common Pleas of Fayette County,
Pennsylvania

PETITION FOR WRIT OF PROHIBITION

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QUESTION PRESENTED

Whether the exercise of personal jurisdiction by the Court of Common Pleas of Fayette County, Pennsylvania over West Virginia resident Petitioner Angela Jarmuth in a child support case violates the doctrine previously stated by this court in Kulko v Superior Court of California, (1978) 436 U.S. 84; 98 S. Ct. 1690; 56 L.Ed. 2d 132.

PARTIES TO THE PROCEEDINGS

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IN THE

Supreme Court of the United States

IN RE ANGELA JARMUTH, Petitioner

On Petition For Writ Of Prohibition
To The Court of Common Pleas of Fayette County,
Pennsylvania

BRIEF FOR THE PETITIONER

OPINIONS BELOW

1. September 23, 2002 Order of the Court of Common Pleas of Fayette County, Pennsylvania imposing a child support obligation on West Virginia citizen and resident Angela (Frinzi) Jarmuth. Pet. App. 12.

2. August 11, 2004 Order of the Supreme Court of Pennsylvania denying, without explanation, Angela Jarmuth's unopposed Petition for writ of prohibition. Pet. App. 13.

JURISDICTION

3. The jurisdiction of this court is invoked under 28 USC 2104 which provides authority for the review by the Supreme Court of state court decisions.

4. The order of the Supreme Court of Pennsylvania denying (without explanation) petitioner's unopposed Petition to that Court for a Writ of Prohibition was entered on August 11, 2004 (Pet. App 13.)

5. This Petition and brief were filed on October 30, 2004.

OTHER AUTHORITY

6. Other Authority.

28 USC 1651 (a) provides for the Supreme Court to enter Writs of Prohibition.

STATEMENT

7. **This petition is in aid of the Court's appellate jurisdiction.**

The United States Supreme Court serves as the ultimate appellate authority for state court decisions. Prior to submission to this Court this matter was submitted to the Pennsylvania Supreme Court and as such is eligible for review by this Court. A Writ of Prohibition is sought instead of a Writ of Certiorari because the issues of law applicable to this case have already been decided by this Court and published in Kulko v Superior Court of California, 430 U.S. 84; 98 S. Ct. 1690; 56 L.Ed. 2d 132, but the conclusions of law announced through that decision have been ignored by the Court of Common Pleas of Fayette County, Pennsylvania and by the Pennsylvania Supreme Court, the highest Pennsylvania state court.

8. **Adequate relief cannot be obtained by any other form or from any other court** as Petitioner has already sought relief from the highest Pennsylvania state court.

a. Petitioner Angela Jarmuth ("Jarmuth") is a citizen and resident of West Virginia with no business or property connection with Pennsylvania who caused no tortuous injury in Pennsylvania. Petitioner's ex-husband, James Frinzi ("Frinzi"), is a Pennsylvania resident. On May 2, 2002

James Frinzi asked the Court of Common Pleas of Fayette County, Pennsylvania ("the trial court") to impose a child support obligation upon this petitioner, Pet. App. 1. Jarmuth's counsel raised a preliminary objection to personal jurisdiction (Pet. App. 4), noting that Jarmuth had no connection to Pennsylvania which would subject her to the personal jurisdiction of the trial court and that the United States Supreme Court, in Kulko (op. cit.) had already stated that the proper course of action in situations of this nature is for a person who seeks to impose a child support obligation upon a parent living in another state is for the moving (James Frinzi) to either file a child support case in the courts of the proposed obligor's (Jarmuth) state (West Virginia) or for Frinzi's Pennsylvania domestic relations office to act as initiating tribunal, sending the action to the West Virginia domestic relations court. Without explanation, the Pennsylvania trial court ignored the precedent established by the United States Supreme Court in Kulko and on September 23, 2002, entered an order imposing a child support obligation upon West Virginia citizen and resident Jarmuth. Pet. App 12.

b. While making child support payments under protest Jarmuth petitioned the Pennsylvania Supreme Court for a Writ of Prohibition citing Kulko and the applicable Pennsylvania statutes which are in accord with the Kulko decision. Jarmuth sought to prohibit enforcement of the support order and of any orders entered in execution of that order, and to require the return of all monies paid in obedience to the trial court's support order. The petition was unopposed. On August 11, 2004 the Pennsylvania Supreme Court, without one word of explanation, denied the petition for a Writ of Prohibition. Pet. App. 13.

9. Exceptional Circumstances warrant the exercise of the Court's discretionary powers.

A state trial court and that state's highest appellate court have ignored this Court's unambiguous proclamation that state courts may not impose a child support obligation upon a non-resident parent who has no connection to the forum state. There is no uncertainty as to the facts in this case which exactly fit the jurisdictional template raised in Kulko. Neither the state trial court nor the state appellate court have even attempted to present an explanation as to how or why the United States Supreme Court's decision in Kulko is inapplicable to instant case - they simply choose to ignore the United States Supreme Court's interpretation of the law. Such a situation is a challenge by the state courts involved to the decisional supremacy of this court and should not be allowed to pass. The state courts' decisions are clearly legally erroneous. Under the Supremacy clause of the United States Constitution, Article III, Section 2, the state courts have no discretion to ignore precedents established by this court through it's decisions.

10. **There are no other adequate remedies available to petitioner**, save the intercession of this court. State court remedies have been exhausted.

11. The underlying case is a child support case as explained above. In numerous pleadings in the Pennsylvania trial and appellate courts Petitioner has stated that she is not seeking to ignore any child support obligation, but that a request to impose such an obligation should be heard, as this court has stated in Kulko, in West Virginia courts applying West Virginia statutes and standards.

ARGUMENT

12. In Jarmuth's preliminary objections and response (Pet. App 4) to James Frinzi's Complaint for Support (Pet. App. 1) filed on May 2, 2002 in the Pennsylvania trial court, Jarmuth

objected to the exercise of personal jurisdiction over her by the Pennsylvania trial court, citing that she neither lived, had any business connections, or owned property in Pennsylvania. Her only contact with that forum state had been to pick up her daughter from visitation with her ex-husband in Pennsylvania so as to bring her daugh4er back to her West Virginia residence. In Frinzi's complaint he correctly stated that Jarmuth (she was referred to by him in his complaint as "Angela Frinzi", her name while married to him) was a West Virginia resident. In his complaint he never alleged any connection at all with Pennsylvania and gave as his only basis for his demand for support that he was principal custodian of the child.

13. The responding papers filed by Jarmuth in opposition to Frinzi's Complaint for Support cited Kulko as well as Pennsylvania cases. It was pointed out that there is not a single post-Kulko citable state or federal case supporting the imposition by a Pennsylvania court of a child support obligation upon a West Virginia resident, and the trial court's assumption of personal jurisdiction is contrary to the Uniform Child Support Jurisdiction statutes of Pennsylvania (and West Virginia). It was noted that the well recognized authority of the Pennsylvania trial court to impose a child support obligation upon Pennsylvania resident James Frinzi did not convey such authority upon a non-resident parent.

14. The trial court entered an order in James Frinzi's favor imposing a child support obligation on non-resident Angela Jarmuth. In it's order of September 22nd, 2002 (Pet. App. 12) the trial court ignored the objections to personal jurisdiction raised by Angela Jarmuth's attorney's and never explained the exercise of such personal jurisdiction upon Jarmuth.

No Basis for the Exercise of Personal Jurisdiction over Jarmuth by the Trial Court

15. West Virginia resident Angela Jarmuth has no connection with Pennsylvania sufficient to satisfy 14th Amendment U.S. Constitution prerequisites for Pennsylvania to exercise personal jurisdiction over her which is the "second test" specified by the United Staes Supreme Court in Kulko (op. cit.).

16. Lacking a sufficient connection with Pennsylvania, the exercise of personal jurisdiction over Jarmuth by the Pennsylvania trial court to enter a new support order against her is barred by the application of the 14th Amendment to the U.S. Constitution.

17. The imposition of a child support obligation by the trial court upon Jarmuth also violates Pennsylvania's specific child support jurisdiction statutes, the "first test" specified by the United States Supreme Court in Kulko (op. cit.) which requires compliance with a forum state's own personal jurisdictional statutes.

18. The action of the trial court was procedurally defective as Pennsylvania's implementation of the Uniform Child Custody Jurisdiction Act required Pennsylvania to act as "initiating tribunal" for Mr. Frinzi and to request that West Virginia act as "responding tribunal".

Exercise of Personal Jurisdiction Violates Prior Determination of Law by U.S. Supreme Court in Kulko

19. The United States Supreme Court, in Kulko (op. cit.) held that for a state to

> "exercise in personam jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled within the State .... would violate the Due Process Clause of the Fourteenth Amendment".

This Court, in Kulko, further held regarding the enforceability of a support order entered in such circumstances that

> "A defendant to be bound by a judgment against him must have certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'".

This Court, in Kulko, held that the procedure to be followed by a parent seeking ("oblige") a child support order against a non-resident ("obligor") is for the oblige to either seek such an order in a court of the proposed obligor's home state OR for the oblige to request his own domestic relations court to act as initiating tribunal to the domestic relations court where the proposed obligor lives, acting as "responding tribunal", when the two states are participants in the Uniform Reciprocal Enforcement of Support Act, as Pennsylvania and West Virginia are. In Kulko this Court wrote:

> "California's legitimate interest in ensuring the support of children residing in California without unduly disrupting the children's lives is already being served by the State's participation in the Uniform Reciprocal Enforcement of Support Act of 1968, which permits a California resident claiming support from a nonresident to file a petition in California and have it's merits adjudicated in the State of the alleged obligor's residence, without either party's having to leave his or her own State. New York is a signatory to the similar statute. Those statutes appear to provide appellee with means to vindicate her claimed right to additional child support from appellant and collection of any support payments found to be owed to her by appellant."

This Court further noted that the issue is not whether a state can find some language in it's statutes to demonstrate some basis to exercise personal jurisdiction over a non-resident parent, but

> "whether the Constitution itself would permit the assertion of jurisdiction"

by a state other than that of the non-resident over the non-resident no matter what the non-resident state might write in it's long - arm statutes, this Court holding that it is irrelevant to try to find a long arm clause to justify the exercise of long arm jurisdiction because the exercise itself is contrary to the 14th Amendment and the framing of long arm clauses to enable a non-residential state to exercise such jurisdiction

> "would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment".

Exercise of Personal Jurisdiction Violates Prior Determination of Law by Pennsylvania's Appellate Courts

20. Pennsylvania's case law supports the negation of any court order obtained in the absence of personal jurisdiction. In Dubrey v Izaguirre, 454 Pa. Super. 504, 685 A.2d 1391, 1393 (1995) the Superior Court of Pennsylvania (an appellate court) wrote that

> "a judgment may be attacked for lack of jurisdiction at any time"

cited by that same Court in Bancorp Group, Inc. v Pirgos Inc., 2000 Pa. Super. 1; 744 A.2d 791.

21. The assertion of personal jurisdiction by the Pennsylvania trial court arises exclusively because Angela Jarmuth is the mother of a child physically present in Pennsylvania because her primary custodian, her father, is a

Pennsylvania resident. In Kulko the U.S. Supreme Court held that the exercise of personal jurisdiction by a state over a non-resident because of a person's "personal, domestic relations" is specifically impermissible.

22. The assertion of personal jurisdiction by the Pennsylvania trial court is violative of prior decisions by the Pennsylvania Superior Court and the Pennsylvania Supreme Court.

a. In Bancorp Group (op. cit.) the Superior Court wrote:

> "We begin our analysis with the observation that a court must have personal jurisdiction over a party to enter a judgment against it. 'Action taken by a court without jurisdiction is a nullity.' Dubrey v Izaguirre,"

b. In Cairns v Cairns, 1999 Pa. Super. 281, 741 A.2d 800, the Superior Court wrote:

> "The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of stat courts to enter judgments affecting the rights or interests of nonresident defendants." Kulko v. Superior Court of California .... The existence of personal jurisdiction ... depends upon the presence of reasonable notice to the defendant that an action has been brought and a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum."

c. In Fidelity v Limestone, 2000 PA Super. 244; 758 A.2d 1207, the Superior Court examined the limitations that the 14th Amendment places on the exercise of jurisdiction

over a non-resident. The Superior Court stated that to withstand a due process challenge the trial court's conduct must "comport with fair play and substantial justice" by first establishing a defensible basis for personal jurisdiction before allowing a suit to proceed. That court wrote:

> "The constitutional limitations on an assertion of specific personal jurisdiction over an out-of-state defendant are clear:
>
> (1) the no-resident defendant must have sufficient minimum contacts with the forum state and
>
> (2) the assertion of in personam jurisdiction must comport with fair play and substantial justice. See King v. Detroit Tool Co., 452 PA Super. 334; 682 A.2d 313, 314 (citing Burger King Corp v Rudzewicz., 471 U.S. 462, 105 S.Ct. 2174, 851 L.Ed. 2d 528 (1985)...
>
> A question of whether the courts of this Commonwealth may exercise specific jurisdiction over a non-resident defendant is determined by a two-prong test applying the Pennsylvania long-arm statute and the Due Process Clause of the Fourteenth Amendment. See King v Detroit Tool Co., 682 A.2d at 314.
>
> The first prong of the test is to determine whether the Pennsylvania long-arm statute permits jurisdiction. A tribunal of this Commonwealth may exercise personal jurisdiction over a person who transacts any business in this Commonwealth. See 42 Pa.C.S.A. 5322(a)(1)...
>
> Regardless of whether general or specific in personam jurisdiction is asserted, the propriety of such an exercise must be tested against the Pennsylvania long arm statute, 42 Pa. C.S.A. 5322, and the due process clause of the Fourteenth

Amendment. In order to meet constitutional muster, a defendant's contacts with the forum state must be such that the defendant could reasonably anticipate being called to defend itself in the forum. See, e.g., Kubik v Letteri, 532 Pa. 10, 19-20, 614 A.2d 1110, 1115 (1992) (expressly adopting the minimum contacts test advocated by the United States Supreme Court in Burger King Corp. v. Rudzewicz, ... Random, fortuitous and attenuated contacts cannot reasonably notify a party that it may be called to defend itself in a foreign forum and, thus, cannot support the exercise of personal jurisdiction. Id. That is, the defendant must have purposefully directed it's activities to the forum and conducted itself in a manner indicating that it has availed itself to the forum's privileges and benefits such that it should also be subjected to the forum state's laws and regulations. General Motors Acceptance Corp. v. Eugene Keller (1999), PA Super. 213, 737 A,2d 279, 281 (citing Hall-Woolford, 698 A.2d at 83).

23. It has never been controverted that when James Frinzi filed his Petition to establish a child support obligation against Angela Jarmuth on May 2, 2002 she was a long-time West Virginia resident, that she owned no real property in Pennsylvania, that she had no sources of income in and did no business in Pennsylvania, and that she caused no tortuous injury to property or person in Pennsylvania.

24. Angela Jarmuth consistently asserted and never waived her jurisdictional objection.

25. The Pennsylvania trial and appellate courts themselves took notice through their own orders and case dockets of the non-residential facts relating to Angela (Frinzi) Jarmuth.

26. The trial court never made any findings of fact to substantiate the exercise of personal jurisdiction – it never performed *the jurisdictional analysis* required by Kulko.

27. It is concluded that the exercise of personal jurisdiction by the trial court – the Court of Common Pleas of Fayette County, Pennsylvania, Domestic Relations Section, in Frinzi v Frinzi, 328 DR 2002, is prohibited by the Fourteenth Amendment to the United States Constitution and that the case and all it's orders and related actions are void from the start.

STATE PERSONAL JURISDICTION STATUTORY ISSUES

Exercise of Personal Jurisdiction Not Supported by State Jurisdiction Statutes

28. Besides being violative of due process requirements of the Fourteenth Amendment, the trial court's exercise of personal jurisdiction over Jarmuth did not satisfy Pennsylvania's applicable personal jurisdiction statutes. Neither the specific (child support) personal jurisdictional statute nor the general "long-arm" personal jurisdictional statutes are satisfied by the facts of the case.

Pennsylvania's Specific Child Support Long Arm Jurisdiction Statute

29. 28 PaCS 7201 (Support – Jurisdiction) provides the statutory basis for the exercise of long – arm personal jurisdiction, but this statute was not satisfied in this case.

a. Angela (Frinzi) Jarmuth was NOT served with a writ of summons, complaint or other appropriate pleading within Pennsylvania.

b. Angela Jarmuth did not submit to the exercise of personal jurisdiction by consent.

c. Angela Jarmuth did not reside with the child in Pennsylvania. In point of fact she resided with her daughter in West Virginia.

d. The child was adopted from Russia over a year after her birth and was previously unknown to her adoptive parents, hence Jarmuth never provided pre-natal expenses for her adoptive daughter.

e. The child's presence [1] in Pennsylvania was not the result of Jarmuth's "acts or directives".

30. It is thus concluded that there is no basis in Pennsylvania's specific long-arm child support jurisdiction statute to support the exercise of personal jurisdiction over Angela Jarmuth.

Exercise of Personal Jurisdiction Not Supported by State General Jurisdiction Statute

31. Chapter 53 of the Pennsylvania Code, "Bases of Jurisdiction and Interstate and International Procedure", 42 PaCS 5301 (a) (Persons. General Rule) provides the general statute for long - arm jurisdiction in civil cases. It is inapplicable because:

a. Angela Jarmuth was not present in Pennsylvania for service of process. Service of process consisted of mailing an "order" (to appear at a Pennsylvania Domestic Relations Section conference) to her at her West Virginia address.

---

[1] In Kulko, the U.S. Supreme Court held that the California "presence" provision was objectionable to the 14th Amendment to the U.S. Constitution and unenforceable.

b. She had no domicile in Pennsylvania during May, 2002.

c. She did not consent to the exercise of personal jurisdiction.

32. None of the three general bases for general jurisdiction being satisfied, there was no basis for the exercise of personal jurisdiction over Angela Jarmuth in any civil matter on the basis of Pennsylvania's general long - arm jurisdictional statute.

33. There being no basis for the exercise of personal jurisdiction (either by general jurisdictional statute nor by specific child support jurisdictional statute) by the trial court, the trial court thus lacked personal jurisdiction to render any order as to Angela Jarmuth. The final and interlocutory orders and all subsequent orders in enforcement or execution are thus void and should be prohibited, and the effect of their enforcement ordered reversed.

ISSUES TRANSCENDING THIS SPECIFIC CASE

Exercise of Personal Jurisdiction is Contrary to Public Policy

34. It is the public policy of the nation that child support obligations be imposed in accordance with the Uniform Interstate Family Support Act which provides for imposition of a child support obligation upon a proposed obligor by a court in the proposed obligor's home state.

a. On July 19, 1996, the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment, in all states, the Uniform Interstate Family Support Act ("The Act") for which that

Conference had secured the unanimous support of representatives of all the states. The child support jurisdiction statutes of Pennsylvania and West Virginia are in accord with the Uniform Act.

b. Shortly thereafter, in 1996, Congress expressed it's conclusion that universal adoption and adherence to The Act is the public policy of the nation, by mandating state enactment of The Act in order for a State to remain eligible for federal funding of child support enforcement. The mandate was contained in the language of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, when Congress included the following language in the legislation:

> "Section 466 (42 U.S.C. 666) is amended by adding at the end the following new subsection:
>
> f) Uniform Interstate Family Support Act - In order to satisfy section 454(20(A)), on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws." P.L. 104-193, 321, 110 Stat. 2221."

c. Thus the exercise of personal jurisdiction by the trial court not only is without any statutory basis, it also violates the public policy of the nation.

Need to Enforce the Supremacy of Decisions of the United States Supreme Court over State Court Practice

35. In Kulko the United States Supreme Court announced how the Fourteenth Amendment to the United States

Constitution acts to limit the exercise of personal jurisdiction on non-residents in child support cases. That doctrinal decision needs strict enforcement because the Kulko decision arises from the constitution itself, the core law of the land, which is supreme over all state courts and which all judicial officials take an oath to honor and support. Further, in accordance with Article III, Section 2 of the United States Constitution, decisions of the United States Supreme Court are binding on all state courts. This supremacy should be zealously enforced when breaches are called to this Court's attention.

The State Court Lacks Any Discretion

36. The decision of this Court in Kulko left the state trial and appellate courts without any interpretative discretion. The failure of both state courts to comply with the Kulko decision was not an abuse of discretion but an abuse of authority – the exercise of jurisdiction where none is present – which is the classic instance meriting issuance of a Writ of Prohibition.

No Precedents Support the Imposition of A Support Obligation Upon a Non-Resident With No Connection to the Forum State

37. There are no federal or state case precedents supporting the imposition of a child support obligation upon a non-resident with no ties to the forum state. This is not surprising given the universal enactment of state laws complying with the Uniform Interstate Family Support Act, the mandate of Congress, and this Court's decision in Kulko.

CONCLUSION

38. A Writ of Prohibition or an Alternative Writ should issue

a. Prohibiting the enforcement of the state court order in Frinzi v Frinzi, No. 328 DR 2002 in the Court of Common Pleas of Favette County, Pennsylvania, which imposed a child support obligation on Petitioner Angela Jarmuth, and

b. Voiding all Orders and administrative actions taken subsequent to the above trial court Order in enforcement and execution.

Ern Reynolds

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October 30, 2004

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Complaint for Support

In the Court of Common Pleas of Fayette County, Pennsylvania

JAMES MICHAEL FRINZI) Docket Number 00328 DR 2002
Plaintiff)
Vs) PACES Case Number 173104485
ANGELA JO FRINZI)
Defendant) Other State ID Number

Complaint for Support

(X) New Complaint

1. Plaintiff resides at
PO Box 276, Ohiopyle Road, Chalk Hill, PA, 15421-0276-76 Fayette County.
Plaintiff's Social Security Number is ***-**-1406 and date of birth is 07/10/53.

2. Defendant resides at
31 Wexford Way, **Bridgeport WV** 26330-9446-31, Fayette County.
Defendant's Social Security Number is ***-**-9466 and date of birth is 08/04/57.

3. (a) Plaintiff and Defendant were married on April 23, 1993 at Key Largo, FL.
(b) Plaintiff and Defendant were separated on.
(c) Plaintiff and Defendant were divorced on February 24, 1999 at Fayette County PA.
(d) Address of last marital domicile.

4. Plaintiff and Defendant are the parents of or stand in loco parentis to the following children:

Name	Birth Date	Age	Born of the Marriage
Jessica J Frinzi	05/07/95	6	Y

Residence:

5. Plaintiff seeks support for the following persons:
Jessica J Frinzi

6. (a) Plaintiff is not receiving public assistance in the amount of $ 00.00.

(b) Plaintiff is receiving additional income in the amount of $ 0.00 from:

7. A previous support order was entered against the Defendant on _____ in an action at _____ in the amount of $ 0.00 for the support of _____.

There are no arrears in the amount of $ 0.00.

8. Plaintiff last received support from the Defendant in the amount of $ 0.00 on _____.

WHEREFORE, Plaintiff requests that an order be entered against Defendant and in favor of the Plaintiff and the aforementioned child for reasonable support and medical coverage.

I verify that the statement made in this Complaint are true and correct. I understand that false statements herein are made subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsification to authorities..

James M Frinzi (signed)
Plaintiff
Date: 5/2/02

{Service List}

Domestic Relations Section
22 E. Main Street
Uniontown, PA 15401-3596

Angela Jo Frinzi
31 Wexford Way
Bridgeport WV 26330-9446

Preliminary Objections of Defendant Angela Jarmuth

In the Court of Common Pleas of Fayette County, Pennsylvania

James M. Frinzi	Order No 328 DR 2002
And	PACSES Case Number 173104485
Angela J. Frinzi	

MOTION ON PRELIMINARY OBJECTIONS TO VENUE, PERSAONAL AND SUBJECT MATTER JURISDICTION TO DISMISS OR TRANSFER TO PRIOR PENDENT CASE IN WEST VIRGINIA

1. Angela Frinzi, Petitioner, MOVES this Court for an Order dismissing or transferring to the Family Law Court of Harrison County, West Virginia, the current child support proceedings in the above captioned support case. Movant has separately requested consolidation of these improperly separately filed cases to allow unified consideration of these objections.
2. Movant attaches by reference the following separately bound and filed (May 20th, 2002, Domestic Relations Section, above captioned cases) Memorandums (courtesy copies served on respective judges):
   a. Angela Frinzi's Memorandum of Prior Pendency of Support Modification Action in West Virginia with exhibits;
   b. Angela Frinzi's memorandum of Unresolved / Pendency West Virginia Custody Matter.
3. On November 20th, 2001 by Order this court noted that Movant had registered the case and associated documents with WV Child Enforcement Services, Harrison County, WV Health and Human Services.
4. On October 23rd, 2001 Movant initiated enforcement and support modification proceedings in West Virginia. See memorandum (a). At the time there were no open child

support matters in Pennsylvania. This still open WV case precedes all child support matters currently before this court in the two support captions advanced by James Frinzi. A witness, John Merritt, a WV Child Enforcement case worker, is prepared to testify as to that and his testimony was refused on May 20th, 2002 by this Court's Domestic Relations case worker at a conference on May 20th, 2002. Per 23 PA CS 7316 he was entitled to testify telephonically on behalf of Movant. Per that same statute, subparagraph (b), Movant is allowed to offer "hearsay" testimony as to what Merritt would have stated and the hearsay testimony of Movant is admissible. Movant did in fact offer such testimony and that testimony is now part of the record.

5. 42 Pa.C.S 7204 bars this court from proceeding in any child support matter, except enforcement in aid of West Virginia as initiating tribunal, since the WV action was initiated first, James Frinzi did not timely challenge that action, and this state has not been the home state of Jessica in accordance with the statutory definition of 42 Pa.C.S 7101(b).

6. In point of fact Jessica has not physically been in Pennsylvania for six consecutive months and whatever presence has existed has been through felony interference with child custody and visitation – the very misconduct by a parent seeking to change support or custody venue that the uniform acts are meant to discourage. See separately bound *"Angela Frinzi's Memorandum of West Virginia Law Regarding James M. Frinzi Removal of Minor Child From Custodian or Person Entitled to Visitation with Intent to Deprive Person of Lawful Custody or Visitation Right (WV Code 61-3-14d) During Period January 10th thru April 30th, 2002"*.

5. 43 Pa.C.S 7204(b) holds that proceeding with a child support action at this time in Pennsylvania is "impermissible" because of the prior, pendant West Virginia support proceeding, because Movant has timely challenged this court's jurisdiction, and because the home state requirement has not been met.

6. Personal jurisdiction is lacking because Movant was not personally served in Pennsylvania nor are any of the statutory requirements otherwise satisfied. Movant is a resident of WV and been so for many years and has no business activity in PA. See 42 Pa.C.S 5301, and Burger King Corp. v Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed. 2d 528 (1985); Kulko v Superior Court of California, 436 U.S. 84; 98 S.Ct. 1690; 56 L.Ed. 2d 132. See also Cairns v Cairns, Superior Court of Pennsylvania, 1999 PA Super 281; 741 A.2d 800 which specifically applies this to domestic relations proceedings.

7. This is a Rule 1028 Preliminary Objection to personal and subject matter jurisdiction.

8. Jessica Frinzi is a legal resident of West Virginia and has not been continuously in Pennsylvania for six months.

9. Jessica Frinzi was illegally in Pennsylvania from January 10th, 2002 through the present. WVC 61-2-14d. See separately bound memorandum, op cit. The custodial rights to Jessica Frinzi are currently being litigated in West Virginia. To sum up, on December 5th, 2001 a West Virginia Circuit Court Judge overturned as an illegal order and gross excess a child school attendance order entered earlier that year by a WV Family Law Master. In retaliation James Frinzi, that night, obtained an ex-parte temporary order which per WV statute expires in20 days or sooner, temporarily giving custody of Jessica to James Frinzi. The next morning the Circuit Judge overturned the Family Law Master's order; at the hearing James Frinzi's counsel admitted to the Circuit Judge that none of the grounds needed for the legal issuance of the order existed and that the only thing "new" was that the Circuit Judge that day had overturned an illegal Family Law Master order. That day the Circuit Court with personal and subject matter jurisdiction also began an abuse and neglect proceeding, heard witnesses and accepting evidence that James Frinzi was sexually abusing Jessica. Rather than defend, James Frinzi obtained a West Virginia Supreme Court order

dismissing – without prejudice or adjudication of the sexual abuse allegations – the Circuit Court abuse and neglect proceeding. It entered no order regarding custody and set the running of the 20 days of the temporary order back as if the abuse and neglect case had not started. The Supreme Court gave as it's reason that it wanted the Family Law Master to render a certain order which he by law had been required to do in ten days four months earlier (but had refused to do) which he could not do if the abuse and neglect case proceeded (automatically stays a Chapter 48 WV proceeding). The December 5th 2001 ex-parte temporary order expired as a matter of law3 on December 25rh, 100` but James Frinzi refused to return Jessica and illegally kept her in Pennsylvania. See above cited memorandum for details.

9. Wrong Venue. 23 Pa.C.S 7305 provides for the mandatory transfer to West Virginia where the proposed obligor resides – this state lacking personal jurisdiction to order her to pay any sum of money – and where the prior pendent support modification action is pending. Rule 1910.2 also applies.

10. This is a preliminary objection to venue.

11. Service does not convey jurisdiction. While notice by certified mail has been accomplished on Movant in one of three of the actions here, that does not convey personal jurisdiction when the served individual is outside this state as anon-resident. Notice has not been properly accomplished in the other support modification issues in accordance with Civil Rule 403 and 1930.4(c).

12. A pre-existing consent property agreement incorporating a child support provision adopted by the Court makes James Frinzi solely responsible for child support and precludes him from attempting to seek such support from Movant. Such an interpretation has already been rendered by this Court on January 8th, 2001 when James Frinzi attempted this previously and that interpretation is provided for by Rule 1910.1(c) (1).

13. While James Frinzi has signed the verification portion of at least one of the pleadings, he neglected to sign his May 2nd 2002 petition for termination - at least in the copy served upon Movant by the Court (it was in an envelope from the Domestic Relations Section and may be regarded as evidence of non-signature of the petition improperly accepted by that office).

14. None of the petitions of James Frinzi contain authenticated and registered copies of any order, Pennsylvania of West Virginia, which he purports to depend upon. There is no proof - strict or otherwise - that here are any circumstances or situations justifying modification or supporting an allegation of jurisdiction. Rule 1910.19(a) and 23 Pa.C.S 7311 (Pleadings) requires such evidence with the petition. There aw no specific facts alleged or documents authenticated or otherwise, served. James Frinzi also failed to satisfy the requirement of Rule 1910.17-19 as to change of this circumstance from "$0" in January, 1999 to a sum computed in accordance with 1910.16 which amounts of approximately $153,000 (disallowing deductions which by statute are not considered for support purposes).

15. There is an unresolved custody dispute in West Virginia. As explained in the referenced memorandum James Frinzi fraudulently obtained an order which is under attack in that court by using a fraudulent witness who he falsely represented as a licensed psychologist to testify as his main witness - the man is neither licensed nor approved for supervision in psychology in any state and his preparation is in counseling, not psychology. Any supporting order relied upon may be attacked under WV Rule 60b, 37 Pa.C.S 33705, and 42 Pa.C.S 4306 using any objection which may be raised in the issuing state. Many other illegal or fraudulent actions were used by James Frinzi in West Virginia to obtain that order - see memorandum for details.

WHEREFORE Petitioner Angela Frinzi moves this Court for an order dismissing or transferring the support modification matters to West Virginia.

May 21, 2002.

Angela J. Frinzi Pro Se
31 Wexford Way
Bridgeport WV 26330
304-842-0878

{Service List}

Domestic Relations Section
22 E. Main Street
Uniontown, PA 15401-3596

Angela Jo Frinzi
31 Wexford Way
Bridgeport WV 26330-9446

Docket of Support Case in Trial Court

Docket	00328 DR 2002
PACSES Case ID	173104485
County	Fayette
Litigants	Frinzi, James vs Jarmuth, Angela J

No.	Date	Docket Description
1	05/25/2004	Request for a hearing to issue a bench warrant against the defendant was filed.
2	05/25/2004	Request for a hearing to issue a bench warrant against the defendant was filed.
3	04/08/2004	Contempt petition issued against the defendant
4	04/-8/2004	Contempt petition issued against the defendant schedule for a conference
5	09/24/2002	Judge signs final order
6	08/06/2002	Complaint for support
7	08/06/2002	Ordered plaintiff to appear at a hearing
8	08/06/2002	Ordered defendant to appear at a hearing
9	08/06/2002	Interim Order in effect (Conference Officer)
10	07/01/2002	Final Order - Modification non-agreement
11	06/12/2002	Modification petition - pro se filed - plaintiff
12	06/12/2002	Interim Order in effect (Conference Officer)
13	06/12/2002	Ordered defendant to appear at a modification hearing
14	06/12/2002	Ordered plaintiff to appear at a modification hearing
15	06/10/2002	Final Order - non-agreement
16	05/30/2002	Interim Order in effect (Conference Officer)
17	05/02/2002	Complaint for Support

18 05/02/2002 Ordered plaintiff to appear at a conference

19 05/02/2002 Ordered defendant to appear at a conference

September 23, 2002 Order of Court of Common Pleas of Fayette County, Pennsylvania imposing a child support obligation on West Virginia resident.

In The Court of Common Pleas of Fayette County, Pennsylvania
Domestic Relations Section

Angela J. Frinzi,	
Plaintiff,	
Vs	No. 328 DR 2002
James M. Frinzi,	
Defendant	

ORDER

AND NOW, September 23, 2002, it is ORDRED and DIRECTED starting October, 2002, James M. Frinzi shall pay Angela J. Frinzi Seven Hundred Dollars ($700.00) per month on arrearages, until said arrearages are paid in full. Also, James Frinzi shall pay an additional One Hundred Thirty three Dollars ($133.00) each month that he receives a payment from Angela J. Frinzi for support. Additionally, the existing Six Hundred Sixty Five Dollar ($665.00) arrearage owed by Angela J. Frinzi to James M. Frinzi shall be adjusted off of the present arrearage amount of Four Thousand Three Hundred Eighty-Four Dollars and Seventy-Four Cents ($4,384.74) to yield a net arrearage of Three Thousand Seven Hundred Nineteen Dollars and Seventy Four Cents ($3,719.74).

BY THE COURT
Leskinen (signed)
Judge

August 11, 2004 Order of Supreme Court of Appeals of Pennsylvania denying uncontested petition for Writ of Prohibition and for Stay of Lower Court.

In The Supreme Court of Pennsylvania Western District

Angela Jarmuth Petitioner V Judge Steve Leskinen Judge of Court of Common Pleas of Fayette County Pennsylvania	No. 39 WM 2004

ORDER

PER CURIAM

AND NOW this 11th day of August, 2004, the request for leave to file original process is granted. The Petition for Writ of Prohibition and Application for Stay of Lower Court Proceedings are denied. The judge's name is to be stricken from the caption.

Docket of Pennsylvania Supreme Court on Petition for Writ of Prohibition

September 6, 2004

Angela Jarmuth
Petitioner
v
Judge Steve Leskinen, Judge of the Court of Common Please of Fayette County, Pennsylvania
Respondent

Initiating Document: Petition for Writ of Prohibition
Case Status: Decided / Active

Counsel Information

Attorney:	Angela Jarmuth
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Representing Pro Se	James Michael Frinzi, Respondent No

Supreme Court Information

Notice of Appeal Filed Below
Probable Jurisdiction
Noted Docketed Date June 1, 2004

Trial Court / Agency Information

Court Below: Fayette County Court of Common Pleas
Lower Court Docket Number 91 of DR 99
County Fayette Division: Domestic Relations
Judge: Leskinen, Steve P., Judge

Related Journal Number Judgment Date:
August 11, 2004

Docket Entries

June 1, 2004	Application for Writ of Prohibition Petitioner: Jarmuth, Angela
June 1, 2004	Application for Leave to File Original Process Petitioner: Jarmuth, Angela
June 7, 2004	Application for Stay Petitioner: Jarmuth, Angela
August 11, 2004	Order Exited Office of the Prothonotary
August 11, 2004	Writ of Prohibition Denied